Supreme Court, U.S.
FILED

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No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

COLUMBUS SANDERS,
Petitioner,

v.

UNITED TEACHERS-LOS ANGELES,
LOS ANGELES UNIFIED SCHOOL
DISTRICT,
Respondents

PETITION FOR A WRIT OF CERTIORARI

To The United States Court of Appeals

For the Ninth Circuit

APPENDIX

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APPENDIX

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

FILED FEB 1 1993
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

COLUMBUS SANDERS,	)	
	)	
Plaintiff,	)	CV 90-2703
	)	KN
v.	)	
	)	
LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.	)	
	)	
Defendants.	)	
	)	
COLUMBUS SANDERS,	)	
	)	
Plaintiff,	)	CV 91-0172
	)	KN
v.	)	
	)	
UNITED TEACHERS - LOS ANGELES, et al.,	)	THIS CONSTITUTES

LOS ANGELES, et al., Defendants.	NOTICE OF ENTRY AS REQUIRED BY FPCP, RULE 77(d).
COLUMBUS SANDERS, Plaintiff, v. LOS ANGELES BOARD OF EDUCATION, et al. Defendants.	CV 92-2352 KN (Ex) ORDER Re Motion for Summary Judgment

The Court, having received and considered plaintiff Columbus Sanders' Motion for summary judgment, and defendants' Los Angeles Unified School District/United Teachers-Los Angeles Cross Motions for summary

judgment, and the papers filed in support thereof and in opposition thereto, **GRANTS** defendant's motion and **DENIES** plaintiff's motion.

I. FACTS

Plaintiff Columbus Sanders (herein-after "Sanders") started working for the Los Angeles Unified School District (Hereinafter "LAUSD") in 1968. Since that time, he has been represented by the United Teachers-Los Angeles (Hereinafter "UTLA") (Sanders Depo. p. 131-132).

During the 1987-1988 school year, Sanders taught at the Liggett

Elementary School in the San Fernando Valley. On February 11, 1988 Sanders was temporarily transferred from Liggett to an assignment in the District's Region F office as a result of a disruptive incident with a parent (hereinafter "the incident"). (Decl. of Tony Rivas, LAUSD Exh. F, p. 14).

After the incident, Sanders con-sulted Gary Campbell, a full-time member of the UTLA, and Doris Rangel, the Chapter Chair of the UTLA at Liggett. On February 22, 1988 Campbell filed a grievance on behalf of Sanders concerning the

transfer (Sanders Depo. p. 134, UTLA Exh. B p. 32). On March 11, 1988, the LAUSD returned Sanders to his former position at Liggett, and Campbell withdrew the grievance in a letter to the LAUSD dated March 14, 1988 (Sanders Depo. 136-137, UTLA Exh. B p. 33).

Following his reassignment in March, Sanders wrote to District officials and School Board members alleging that Ed Krojansky and Tony Rivas (his principal and regional super-intendent, respectively) were racists (Decl. of Ed Krojansky and Tony Rivas, LAUSD Exhibits E

and F. During this period (Spring, 1988 semester), Sanders was absent from his classroom at Liggett for 69 school days because of illness. (Sanders Exhibit BA, p.4).

In late Spring 1988, Tony Rivas requested a review of Sanders' assignment at Liggett school by LAUSD's school operations office. According to Rivas, the review was motivated by three factors: concern about the continued working relationship between Sanders and Krojansky, Sanders' admitted unhappiness with the

assignment at Liggett school, and Sanders' high rate of absenteeism in the Spring 1988 semester (Decl. of Tony Rivas, LAUSD Exh. F).

On September 13, 1988, Sanders was notified by LAUSD administrative consultant, Edward Sams, that he was being transferred from Liggett to Broadus Elementary School in Pacoima (Sanders Depo.p. 139). Sams explained that the transfer Broadus elementary school, which was closer to Sanders' home, was not penal in nature and would not result in any reduction in

salary or employee benefits (Decl. of Ed Sams, LAUSD Exh. C pgs. 7-8). Subsequently, Sanders spoke to Campbell and Rangel of the UTLA about the transfer, and on September 16, 1988, Campbell filed a grievance on Sanders' behalf (Sanders Depo. p. 145; UTLA Exh. B p. 35).

In accordance with the collective bargaining and UTLA, a Step I grievance conference was held at the District office of

Ed Sams on April 18, 1989.[1] (Sanders

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[1] UTLA's grievance procedure involves two levels before a grievance is submitted to arbitration. Step I involves the filing of a formal grievance. Within five days of presentation of the grievance in writing to the immediate administrator, a meeting is held between the grievant and the immediate administrator to discuss the grievance. Within five days, the immediate supervisor is required to reply to the grievance. After the grievant receives the reply, Step I is concluded.

If the grievance is not resolved at Step I, the grievant may within five days after the conclusion of Step I, present the grievance to the appropriate superintendent, division or designee. After the administrator responds in writing, the receipt of the response by the grievant terminates Step II. If the grievance is not resolved at Step II, UTLA may, but it is not

Depo. 151). Sanders was represented at that meeting by UTLA's Campbell. (Sanders Depo. 153).

The LAUSD's response to the Step I meeting was unfavorable to Sanders. (UTLA Exh. B, p. 39). Consequently, Campbell sent LAUSD a letter indicating that Sanders wished to move the grievance to step II. (Sanders Depo. 162; UTLA Exh. B, p. 40). Sanders was not present at the Step II meeting due to illness, but Campbell represented him on behalf of UTLA. (Sanders

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Collective Bargaining Agreement; Sanders Exh. A, p. 1241).

Depo. 169). Sanders' grievance was again denied by LAUSD after the Step II meeting. (Sanders Depo. 170).

In a letter to Sanders dated November 3, 1989, UTLA's Grievance Review Committee Chair, Jim Weber, explained that after reviewing the language of the collective bargaining agreement, UTLA had decided not to pursue Sanders' grievance to arbitration. (Sanders Depo. 174; UTLA Exh. B, p. 41). The letter also stated that Sanders could appeal this decision to the UTLA Grievance Review Committee. Sanders appealed the decision. (Sanders depo. 178).

In denying the appeal for arbitration, the Grievance Review

Committee explained to Sanders that the plain language of the collective bargaining agreement specifically prohibited review of charges of racial discrimination.[2] Consequently, on June 21, 1990, Sanders received a letter from UTLA re-iterating that the union would not be pursuing his grievance to arbitration. (UTLA Exh. B, p. 42).

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[2] Article V, Sect. 1.1 of the 1986-1988 Collective Bargaining Agreement between UTLA and LAUSD provides that: "Also exluded from this grievance procedure are those matters so indicated elsewhere in this agreement. Claimed violations of Article VII (Non-Discrimination) are handled under appropriate statutory and/or judicial procedures (where available) rather than under this grievance procedure. [Emphasis Added].

After receiving the June 21 letter, Sanders filed a complaint against the UTLA with the Federal Equal Employment Opportunity Commission (hereinafter EEOC) on August 6th, 1990. (Sanders Exh. A, p. 1222). After reviewing the case, the EEOC determined that the facts did not support a finding that UTLA had discriminated against Sanders. Specifically, the EEOC concluded that "[t]he facts did not show that, but for his race, Charging party would have been treated differently." (UTLA Exh. B, p. 43).

Thereafter, Sanders filed suit against UTLA and LAUSD in Federal District Court, alleding violations of Title VII, 42 U.S.C. Sects. 1981-Sects. 1986, as well

42 U.S.C. Sects. 1981-Sects. 1986, as well as intentional infliction of emotional distress. Currently, both Sanders and LAUSD & UTLA have filed motions for summary judgment.

II. DISCUSSION

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is appropriate only if there is "no geniune issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Ninth Circuit has elaborated that:

> The very object of summary judgment is to separate real and geniune issues from those that are formal or pretended, so that only the former may subject the moving party to the burden of trial citation omitted]. Here we are

convinced that the issues of fact created by [the non-moving party] are not issues which this Court could reasonably characterize as geniune; rather, they are sham issues which should not subject the [moving party] to the burden of the trial.

Radobenko v. Automated Equipment Corp., 520 F. 2d 540, 544 (9th Cir 1975).

In the present case, defendants LAUSD and UTLA have presented overwhelming and uncontroverted evidence to rebut allegations of racial discrimination and intentional infliction of emotional distress. Plaintiff Sanders, on the other hand, has only presented self-

serving and speculative assertions to support his accusations; he has not demonstrated that geniune issues of material fact remain to be resolved or that he is entitled to judgment as a matter of law.

III. 42 U.S.C. SECTS. 1981-SECTS. 1986 ACTIONS

A. LAUSD

Eleventh Amendment

Sanders' 42 U.S.C. Sects. 1981-Sects. 1986 claims against the LAUSD are barred pursuant to the Eleventh Amendment of the United States Constitution as enunciated in Belanger v. Madera Unified School Dist., 963 F.2d 248 (9th Cir.

1992). Belanger involved an action against a California public school district alleging violation of 42 U.S.C. Sect. 1983. The Belanger court held that California school districts are agencies of the state and are thus protected by Eleventh Amendment immunity.

Despite its straight-forward language, the exact boundaries of the Eleventh Amendment are far from clear. In attempting to discern the limits of the Amendment, the Supreme Court traditionally looks toward whether the substance of the relief sought is prospective or retrospective in nature. As was explained in Green v. Mansour, 474 U.S. 64, 68 (1985),

"[r]emedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law. But the compensatory or deterrence interests are insufficient to overcome the dictates of the Eleventh Amendment."

Here, Sanders seeks compensatory and punitive damages for LAUSD's alleged violations of 42 U.S.C. Sects. 1981-Sects. 1986. Clearly, these claims are barred pursuant to the dictates of the Eleventh Amendment.

Sanders also seeks "equitable relief" and back pay. Regarding the latter, it is hard to understand how Sanders could have a claim for backpay when he was merely

transferred from Liggett to Broadus elementary schools (with full pay and benefits) instead of fired.

Sanders claim for "equitable relief," however, merits more discussion. Specifically, Sanders alleges that LAUSD discriminated against him and continues to do so against other Afro-Americans.[3]

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[3] We note that Sanders is no longer employed by LAUSD, and he is not seeking re-instatement. Indeed, the gravamen of Sanders' complaint is that LAUSD discriminated against him in the past. Accordingly, Sanders cannot claim that he is seeking injunctive relief against LAUSD, thus permitting him to make an end-run around the Eleventh Amendment limitation.

We also note that Sanders does not have proper standing to file a claim against LAUSD on behalf of those Afro-Americans who he

Therefore, he seeks "equitable relief" by the court to bring an end to what he perceives as present violations of 42 U.S.C. Sects. 1981-Sects. 1986 by the LAUSD.

However, in Edelman v. Jordan, 415 U.S. 651, 668 (1974), the Court suggested that it is appropriate to look to the substance rather than to the form of the relief sought. Here, Sanders' claims for back pay and equitable relief appear to serve merely as a pretext for an otherwise straight-forward claim of damages against LAUSD. Consequently, Sanders' claims for "equitable relief" and back pay also are

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alleges are still discriminated against.

properly barred pursuant to the Eleventh Amendment.

B. UTLA

Sanders alleges that UTLA violated 42 U.S.C. Sect. 1981 by refusing to process his grievance to arbitration. Although Sanders' claim appears timely, it nonetheless fails on the merits.

Statute of Limitations

Sanders' 42. U.S.C. Sect. 1981 claim against UTLA is timely-filed under the applicable statute of limitations. Specifically, CA code of Civ. Pro. Sect. 340(3) states that the statute of limitations applicable to a cause of action arising under 42 U.S.C. Sects.

1981-Sects. 1986 is one year after the date of accrual. Del Persio v. Thornsley, 877 F.2d 785 (9th Cir. 1989) (applying Sect. 340(3) to a Sect. 1983 claim).

Here the date of accrual for Sanders' cause of action against UTLA was 6/6/90 (the day Sanders was notified of UTLA's refusal to process his grievance to arbitration). In order for Sanders' 42 U.S.C. Sect. 1981 claim to be considered timely, he must have filed it by 6/6/91. In fact, Sanders' claims were filed with the EEOC on 8/6/90, well-within the applicable limitations period.

Therefore, Sanders' 42 U.S.C. Sect. 1981 action is considered timely.[4]

The Merits of Sanders' 42 U.S.C. Sect. 1981 Action

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[4] Although we do not reach the issue of the limitations period due to our dismissal of Sanders' claims based on the Eleventh Amendment, we note that Sanders' 42 U.S.C. Sects. 1981-Sects. 1986 claims against LAUSD would also be time-barred.

Specifically, the date of accrual for Sanders' cause of action against LAUSD would be 9/13/88 (the day Sanders was notified of his transfer). Consequently, in order for Sanders' 42 U.S.C. Sects. 1981-Sects. 1986 claims to be considered timely, he must have filed them by 9/13/89. In fact, Sanders' claims were filed with the EEOC on 8/6/90, eleven months after the applicable statute of limitations.

Sanders alleges that UTLA violated 42 U.S.C. Sect. 1981 by refusing to process his grievance to arbitration. By making a 42 U.S.C. Sect. 1981 claim against a union, Sanders in fact alleges a violation of the union's duty of fair representation to its members.[5] Courts have held that the

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[5] On the Federal tier, "the duty of fair representation is a judicially established rule imposed on labor organizations because of their status as exclusive bargaining representative for all of the employees in a given bargaining unit." Peterson v. Kennedy, 771 F. 2d 1244, 1253 (9th Cir. 1985). A union breaches its duty of fair representation to its members when its conduct is "arbitrary, discriminatory, or in bad faith.". Vaca vs.Sipes, 386 U.S. 171, 190 (1976).

In California, the duty of fair representation is statutorily

plaintiff must prove three elements in order to establish a prima facie claim of discrimination against a union:

> (1) that the company committed a violation of the collective bargaining agreement with respect to the plaintiffs;
> (2) that to go unrepaired, thus breaching its own duty of fair representation; and
> (3) that there was some indication that the Union's actions were motivated by racial animus.

Bugg v. Int'l Union of Allied Industrial Workers of America, 674 F.2d 595, 598 n.5 (7th Cir. 1982) (summarizing Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976); Vaca v. Sipes, 386 U.S. 171

---

imposed on labor unions representing public sector employee. Cal. Gov. Code, Sect. 3544.9 (Educational Employment Relations Act).

(1967); and McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)).

Bugg Analysis

Applying the three-pronged test enunciated in Bugg to the present case, it is clear that Sanders' allegations fail to assert a prima facie claim of discrimination against UTLA.

First, Sanders offers no evidence that UTLA committed a violation of the collective bargaining agreement by refusing to process his grievance to arbitration. Instead, he alleges only broad assertions of racial discrimination in violation of Article VII of the

UTLA/LAUSD collective bargaining agreement.[6]

Second, Sanders cannot prove that UTLA breached its own duty of fair representation. No evidence exists demonstrating that UTLA acted toward Sanders in an "arbitrary, discriminatory, or...bad faith" manner. Vaca, 386 U.S. 171, 190 (1966). Instead, existing

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[6] A typical example of Sanders' "proof" of racial discrimination is contained in his Declaration in Support of Summary Judgment #18. Specifically, Sanders refers to language contained in Mr. Sams 9/26/88 transfer letter ("We also want to state that this transfer is in no way a punitive measure") to prove that "the idea of being punitive was in [plaintiff's] mind... or could be understood to be punitive by all persons.

evidence indicates that UTLA went out of its way to accommodate Sanders' grievance.[7]

Finally, Sanders offers no evidence indicating that UTLA's failure to process his grievance to arbitration was motivated by racial animus. Rather, the apparent reason why UTLA refused to arbitrate Sanders grievance was based upon explicit language in the collective bargaining agreement which prohibited resolution of claims based on racial discrimination.[8]

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[7] As explained in the **FACTS** section, UTLA acted in full accordance with the collective bargaining agreement when processing Sanders' grievance. Specifically, Sanders was granted Step I & II review meeting, as well as a chance to appeal the Step II decision.

A Union's Duty to Process Grievances

The gravamen of Sanders' complaint is that UTLA refused to pursue his grievance to arbitration. However, it is well established that a union is under no obligation to take a all cases to arbitration. Indeed, the Supreme Court has stated that "[w]e do not agree that an individual employee has an absolute right to have his grievance taken to arbitration regardless of the provisions of the applicable bargaining agreement." Vaca, 386 U.S. 171, 191 (1966). Therefore, while Sanders may disagree with UTLA's decision not to pursue his case to

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[8] See: Article V, Sect. 1.1 of the UTLA/LAUSD collective

arbitration, UTLA may legitimately refuse to do so in accordance with the language of the collective bargaining agreement.

UTLA's decision not to take Sander's grievance to arbitration should stand even if they erred in reaching the determination. The court in Peterson v. Kennedy, 771 F.2d 1244, 1253, 1254 (9th Cir. 1985) held that "negligent conduct on the part of a union does not constitute a breach of the union's duty of fair representation" and that "[a] union's repres-entation of its members 'need not be error free'." Therefore, absent a showing that racial animus was linked to

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bargaining agreement.

UTLA's refusal to process his grievance, Sanders' discrimination claim fails.

Goodman v. Lukens Steel Co.

To support his claim that UTLA acted in a racially discriminatory manner by refusing to process his grievance, Sanders relies solely on Goodman v. Lukens Steel Co., 482 U.S. 656 (1986). The holding of Goodman, however, is clearly distinguishable from the present situation.

In Goodman, plaintiff union members brought suit against their union, asserting racial discrimination claims under 42 U.S.C. Sect. 1981. It was established that the union systematically refused to assert instances of racial

discrimination as grievances, in spite of language in the collective bargaining agreement that would allow for such claims. The Supreme Court held that "a collective-bargaining agent could not...follow a policy of refusing to file grievable racial discrimination claims however strong they might be and however sure the agent was that the employer was discriminating against blacks...on the ground that the employer looks with disfavor on and resents such grievances." Id., at 668-669. The facts of the present case make it readily distinguishable from Goodman. Specifically, Article V, Sect. 1.1's express prohibition of pursuing

grievances based on Article VII[9] differs dramatically with the collective bargaining agreement found in Goodman, which allowed grievances to arbitration, the claim would have ultimately been dismissed as outside the jurisdiction of

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[9] Article VII (Non-Discrimination): Sect. 1.0 Pursuant to applicable Federal and State laws, the District and UTLA agree not to discriminate against any employee based upon race, color, creed, national origin, sex, age, marital status, handicap, or political or UTLA affiliation, and to have due regard for employee's privacy (including sexual orientation) and constitutional rights as citizens.

the UTLA.[10] Consequently, Sanders' reliance upon Goodman is illfounded.

IV TITLE VII ACTION (42 U.S.C. SECT. 200E)

A. LAUSD

Sanders argues that conduct by LAUSD officials Ed Krojansky and Tony Rivas, which resulted in his transfer from Liggett to Broadus Elementary school, violated the non-discrimination provisions of Title VII, 42 U.S.C. Sect. 2000e et seq. The reasoning articulated in section B.I. (Eleventh Amendment bars Sanders' 42 U.S.C. Sects. 1981-

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[10] See: Article V, Sect. 1.1 of the UTLA/LAUSD collective bargaining agreement.

Sects. 1986 actions against LAUSD) is just as applicable here. Therefore Sanders' 42 U.S.C. Sect. 2000e actions against LAUSD are barred pursuant to the Eleventh Amendment.

II. UTLA

Sanders alleges that UTLA discriminated against him in violation of 42 U.S.C. Sect. 2000e et seq. by refusing to process his grievance to arbitration. Here again, while Sanders' action appears timely, it nonetheless fails on the merits.

Statute of Limitations

As a pre-requisite to pursuing a Title VII action in Federal Court, a

party must file a Title VII charge with the EEOC within 180 days (300 on certain occasions) after the occurrence of the alleged unlawful employment practice pursuant to 42 U.S.C. Sect. 2000e-5(e). See Mohasco Corp. v. Silver, 447 U.S 807, 100 S.Ct. 2486, 65 L.Ed.2d 532 (1980); EEOC v. Commercial Office Products Co., 486 U.S. 107, 108 S.Ct. 1666, 100 L.Ed.2d 96 (1988); Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 102 S.Ct. 1127, 71 L.Ed. 2d 234 (1982).

In Delaware State College v. Ricks, 449 U.S. 250, 101 S.Ct. 498, 66 L.Ed.2d 431 (1980), the Supreme

Court stated that the minitation period for actions arising under Title VII begins to run at the occurrence of the alleged discrimination. See also Chardon v. Fernandez, 454 U.S. 6 (1981) (per curiam opinion).

In his declaration in support of summary judgment #13e, Sanders appropriately argues that the relevant date of accrual for his 42 U.S.C. Sect. 2000e action was June 6, 1990, the date which the UTLA informed him that it would not pursue his grievance to arbitration. Because 6/6/90 is the date of UTLA's alleged discrimination against Sanders, it

properly becomes the date of accrual under the Ricks analysis. Consequently, Sanders' filed his EEOC complaint well within Sect. 2000e-5(e)'s prescribed limitations period to preserve his Title VII action.[11]

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[11] Although we do not reach the issue of the limitations period as to LAUSD due to our dismissal of Sanders' action based on the Eleventh Amendment, we note that Sanders' 42 U.S.C. Sect. 2000e et seq. claim against LAUSD would also be time barred.

Specifically, Sanders became aware of the alleged discriminatory decision to transfer him on September 13, 1988. Inorder to preserve a Title VII action in accordance with 42 U.S.C. Sect. 2000e-5(e), Sanders would had to have filed an EEOC charge prior to July 15, 1989. In fact, Sanders filed a complaint with the EEOC on August 6, 1990, approximately thirteen months

The Merits of Sanders' 42 U.S.C. Sect. 2000e et seq. Action

Because Sanders' 42 U.S.C. Sect. 2000e claim is timely filed, it is necessary to consider the merits to his claim. Specifically, Sanders alleges that the UTLA discriminated against him by refusing to process his grievance to arbitration. In Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981), the Supreme Court held that Title VII discrimination claims based on

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after the applicable limitations period.

Additionally, Sanders' EEOC complaint named only UTLA (not LAUSD) as defendants.

opposition to an unlawful employment practice must be assessed according to a three-stage procedure. Specifically, these steps are:

> (1)The plaintiff has the burden of proving a prima facie case of discrimination based on opposition to an unlawful employment practice.
>
> (2)If plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the adverse employment action.
>
> (3)If the defendant carries its burden of articulating a proper reason, the plaintiff has an opportunity to prove by preponderance of the evidence that the stated reason was not the defendant's true reason for acting, but a pretext for discrimination.

(1)Prima Facie Case

Plaintiff establishes a prima facie case of discrimination based on opposition to an unlawful employment action if he shows three elements:

> (1) He has expressed in statutorily protected expression;
> (2) He has suffered an adverse employment action; and
> (3) There is a causal link between the protected expression and the adverse action.

E.E.O.C. v. Crown Zellerbach Corp., 720 F.2d 1008, 1012 (9th Cir. 1983) quoting Payne v. McLemore's Wholesale & Retail Stores, 654 F.2d 1130, 1136 (5th Cir. 1981).

Here, it is conceded that Sanders' grievance about LAUSD's alleged

Here, it is conceded that Sanders' grievance about LAUSD's alleged campaign of discrimination against him is a statutorily protected expression. Furthermore, it is conceded that he suffered an adverse employment action as a result of UTLA's failure to process his grievance to arbitration. However, Sanders cannot prove that a causal link exists between the protected expression and the adverse action. Specifically, Sanders has not shown that the reason why UTLA did not process his grievance to arbitration was due to UTLA's desire to retaliate against Sanders for filing the grievance against the LAUSD. Consequently, Sanders' prima facie claim

of discrimination based on an unlawful employment practice fails.

(2)Reasonableness of the Opposition

Even if Sanders were able to establish a prima facie case of discrimination based on unlawful employment practice, UTLA can meet its burden of showing a legitimate, non-discriminatory reason why it chose not to process Sanders' grievance. Specifically, UTLA can point to Article V, Sect. 1.1 of the LUASD/UTLA collective bargaining agreement, which expressly prohibits pursuit of grievances based upon racial discrimination. Consequently, UTLA can legitimately argue that the sole reason it chose not to pursue Sander's grievance to

arbitration was due to the explicit language in the collective bargaining agreement.

(3)True Intent Behind Defendant's Actions

Assuming that Sanders established a prima facie case, and that UTLA meets its burden of articulating a legitimate, non-discriminatory reason for the adverse employment action, Sanders must show by a preponderance of the evidence that UTLA's stated reason for its action was merely a pretext for discrimination.

Here, Sanders did not allege a single fact to substantiate his beliefs that UTLA's decision not to take his grievance to arbitration was based on racial animus.

Indeed, all existing evidence proves otherwise -- UTLA did everything that it possibly could on Sanders' behalf.[12] Therefore, Sanders fails to carry his burden.

(4)Result

In light of Sanders' failure to establish a prima facie case of discrimination based on opposition to an unlawful employment practice, UTLA's successful effort to articulate a

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[12] In short, UTLA filed the grievance on behalf of Sanders against LAUSD as well as represented him through the Steps I & II of the grievance procedure established by the collective bargaining agreement.

For a comprehensive summary of UTLA's actions on behalf of Sanders, see the **FACTS** section.

legitimate, non-discriminatory reason for its adverse action, and Sanders' inability to prove that UTLA's action was merely a pretext for discrimination, Sanders' Title VII/42 U.S.C. Sect. 2000e et seq. action against UTLA fails.

V. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

A. LAUSD

Sanders alleges that the inappopriate conduct of LUASD officials Ed Krojansky and Tony Rivas was motivated by racial animus. Sanders also claims that this conduct caused him emotional distress. Here again, the

reasoning discussed in section B.I. (Eleventh Amendment bars Sanders' 42 U.S.C. Sects. 1981-Sects. 1986 actions against LAUSD) is applicable. Therefore, Sanders' IIED action is barred pursuant to the Eleventh Amendment.

B. UTLA

Sanders claims that racial discrimination motivated UTLA's failure to fully process his grievance. Sanders further alleges that this conduct caused him emotional distress. The general rule in California is that conduct arising from a normal part of the employment relationship (including IIED claims against an employer) is barred by the

against an employer) is barred by the exclusivity provisions of the Workers' Compensation Act. Livitsanos v. Superior Court, 2 Cal. 4th 744, 7 Cal.Rptr. 808, 828 P.2d 1195 (1992); Cole v. Fair Oaks Fire Protection Dist., 43 Cal. 3d 148, 233 Cal.Rptr. 308, 729 P.2d 743 (1987). See also CA Lab. Code, Sects. 3600, 3601.

In Livitsanos, plaintiff employee sued defendant employer alleging defamation and negligent and intentional infliction of emotional distress. The complaint arose from an alleged campaign of harassment conducted by the employer resulting in the wrongful termination of the employee. In assessing plaintiff's

emotional injury claims, the Court held that emotional distress claims against an employer are pre-empted by the exclusivity provisions of the Workers' Compensation Act., notwithstanding the absence of any compensable physical disability.

Similarly in Cole, plaintiff brought an action against his employer for IIED. The complaint arose from an alleged campaign of harassment conducted by the employer which included unjustified institution of disciplinary proceedings against plaintiff, procuring plaintiff's temporary demotion, and attempting to force plaintiff's retirement. In affirming the appellate court, the California Supreme Court held that an

employee cannot maintain a civil cause of action for IIED against an employer when the employee's claim is based on conduct normally occurring within the workplace.

Sanders' action appears substantially similar to those IIED claims found to be pre-empted in Livitsanos and Cole. However, Sanders, might assert (although in this case he has not) that the alleged discriminatory grievance procedures utilized by UTLA falls outside the scope of his normal employment duties. While potentially colorable, Sanders' IIED regarding the UTLA's grievance procedures are problematic for two reasons. First, Sanders offers no proof of actual discrimination by the UTLA; he merely

speculates that racial discrimination motivated the decision not to proceed to arbitration with his grievance.

Second, it is reasonable to consider that Sanders' filing of a grievance with UTLA is regarded as common workplace conduct. Regarded as such, Sanders IIED claim would statutorily be excluded pursuant to the exclusivity provision of the Worker's Compensation Act.[13]

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[13] Although we do not reach the issue of IIED due to our dismissal of Sanders' action based on the Eleventh Amendment, we note that Sanders' IIED claim against LAUSD, like his claim against UTLA, would be barred.

Specifically, Sanders' IIED claim could partially arise from the alleged racist conduct of his principal and regional superintendent, Ed Krojansky and

E. CONCLUSION

Despite the voluminous amount of paper submitted by Sanders in support of his motion of summary judgment, he presents no hard evidence showing that either UTLA or LAUSD discriminated against him. Instead, most of Sanders' pleadings

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principal and regional superintendent, Ed Krojansky and Tony Rivas, respectively. Assuming that a teacher regularly deals with dis/her principal and is kept informed of district matters by his/her regional superintendent, then Krojansky's and Rivas' conduct would be considered normally occurring in the workplace. Consequently, the rule established in Livitsanos and Cole (i.e. claims of IIED against an employer arising from conduct inherent within the workplace are barred under the exclusivity provision of the Workers' Compensation Act) is applicable.

contain either: (1) documentation of relevant dates, events, and encounters with various administrative agencies; (2) speculative and conclusory allegations about the discriminatory practices of UTLA and LAUSD. While Sanders' category #1 documentations were helpful in obtaining a picture of what actually happened in the case, they offered absolutely no hard proof to substantiate his allegations of racism.

All of Sander's actions against LAUSD (42 U.S.C. Sects. 1981-Sects. 1986, 42 U.S.C. Sect. 2000e, and IIED) are barred due to the District's Eleventh Amendment immunity. However, even if the Court were to assume that LAUSD does not qualify for

to assume that LAUSD does not qualify for Eleventh Amendment Immunity, Sanders' racial discrimination claims against the District fail because they are time-barred, and his IIED claim fails because workers' compensation is his exclusive remedy.

Sanders' allegations against UTLA (42 U.S.C. Sect. 1981, 42 U.S.C. Sect. 2000e, IIED) must also fail. Specifically, the evidence dramatically shows that UTLA, instead of refusing to help Sanders based on his race, bent-over-backward to help him process his grievance. Indeed, even Sanders repeatedly praised UTLA's efforts on his behalf. (Sanders Depo. 138, 184-186; UTLA Exh. 3). Were it not for the

express prohibition of processing grievances based on discrimination, this Court has little doubt that UTLA would have sent Sanders' case to arbitration (if for no other reason than to settle the matter).

Sander's IIED claim against UTLA fails for the same reasons as it does against LAUSD (i.e. Workers' Compensation is the exclusive remedy for IIED claims occurring in the workplace).

Defendants' LAUSD and UTLA motions for summary judgment are therefore **GRANTED**.

Related Case

Sanders has filed a related case, CV 92-2352 KN, in which he seeks declaratory

relief to the effect that the UTLA's written policy of not pursuing Title VII claims to arbitration is unlawful. Although the question raised my be an interesting one, it is not clear that Sanders has standing to raise it. However, it is unclear whether Sanders intends to pursue this related case. The last paper filed by Sanders is dated August 25, 1992. No papers have been filed by the named defendants, yet plaintiff has not moved for entry of Default. Plaintiff is therefore ordered to show cause (within fourteen days of the date of this order) why CV 92-2352 should not be dismissed for failure to prosecute. Fed. R. Civ. Pro. 41(b).

IT IS SO ORDERED.

DATED: February 1, 1993

s\David V. Kenyon
DAVID V. KENYON
UNITED STATES
DISTRICT JUDGE

FILED
March 10, 1993
U.S. DISTRICT COURT
CENTRAL DISTRICT
OF CALIFORNIA
BY DEPUTY

ENTERED
CLERK OF DISTRICT COURT
MAR 16, 1993
CENTRAL DISTRICT
OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

COLUMBUS SANDERS,	
Plaintiff,	CV 92-23552 KN (Ex)
v.	ORDER Re: Dismissal for Failure to Prosecute.
LOS ANGELES BOARD OF EDUCATION, et al.	
	THIS

Defendants.)CONSTITUTES
)NOTICE OF
)ENTRY AS
)REQUIRED BY
FRCP, RULE
77(d)

The Court, having received and considered Plaintiff's Motion to Show Cause why CV 92-2352 KN (Ex) should not be dismissed for failure to prosecute, and the papers filed in support thereof, hereby **DISMISSES** Plaintiff's action.

Sanders argues that he has standing to pursue his action for declaratory relief[1] based upon his continuing

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[1] In CV 92-2352, Sanders seeks declaratory relief to the effect that the UTLA's written policy of

employment with LAUSD.[2] However, Sanders does not appear to be interested in pursuing the instant action. Specifically, Sanders states "the court may choose [to] close the case and allow the Department of Justice to do whatever it likes concerning the case." See, Sanders' Response to 2/1/93 Order, p. 2. Given that Sanders presents no compelling evidence or argument in support of his claim for declaratory relief, the Court

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that the UTLA's written policy of nor pursuing Title VII claims to arbitration is unlawful.

[2] Due to the confusing and unorganized nature of the papers previously submitted by Sanders, the Court erred in stating that he was no longer employed by LAUSD. See, 2/1/93 Order, p.7,n.3).

sees no reason why it should ignore Sanders' instruction. Accordingly, CV No. 92-2352 is DISMISSED.

IT IS SO ORDERED.

DATED: March 10, 1993

s\ David V. Kenyon
DAVID V. KENYON
UNITED STATES
DISTRICT JUDGE

FILED
Nov 21, 1994
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COLUMBUS SANDERS, Plaintiff-Appellant, vs. LOS ANGELES UNIFIED SCHOOL DISTRICT; ED SAMS; TONY RIVAS, Supervisor; UNITED TEACHERS LOS ANGELES, Defendants-Appellees.	No. 93-55397 D.C. No. CV-90-02703-DVK
COLUMBUS SANDERS, Plaintiff-Appellant, vs.	No. 93-55569 D.C. No. CV-92-02352 KN CENTRAL CALIFORNIA

LOS ANGELES BOARD OF EDUCATION, LOS ANGELES UNIFIED SCHOOL DISTRICT; DR. TONY RIVAS; DR. ED SAMS; UNITED TEACHERS LOS ANGELES GRIEVANCE RESOLUTION COMMITTEE; UNITED TEACHERS LOS ANGELES BOARD OF DIRECTORS,	MEMORANDUM*
Defendants-Appellees.	

Appeal from the Decision of the United States District Court for the Central District of California, David V. Kenyon, District Judge, Presiding

Submitted August 4, 1994**

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Pasadena, California

Before: D.W. NELSON AND NOONAN, Circuit Judges, and KING,*** District Judge.

In this consolidated appeal, Columbus Sanders challenges pro se the district court's grant of summary judgment in favor of the Los Angeles Unified School District ("LAUSD"), United Teachers Los Angeles ("UTLA"), and others (No. 93-55397), and

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** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a) and Ninth Circuit Rule 34-4.

*** Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, sitting by designation.

dismissal of his action against the Los Angeles Board of Education and others (No. 93-55569). The actions arise out of Sanders' employment with LAUSD as an elementary school teacher, and involve alleged violations of Title VII, 42 U.S.C. Sect. 2000e, and 42 U.S.C. Sects. 1981-1986, as well as claims of intentional infliction of emotional distress. We have jurisdiction pursuant to 28 U.S.C. Sect. 1291, review de novo the grant of summary judgment, Matter of McLinn, 739 F.2d 1395 (9th Cir. 1984) (en banc), review for abuse of discretion the dismissal for failure to prosecute, Link v. Wabash R.R. Co., 370 U.S. 626, 633 (1962), and affirm.

I.

The district court granted summary judgment in favor of LAUSD in No. 93-55397 because all of Sanders' claims against LAUSD are barred by the Eleventh Amendment to the United States Constitution.

We recognized in Belanger v. Madera Unified School Dist., 963 F.2d 248 (9th Cir. 1992), cert. denied, 113 S. Ct. 1280 (U.S. Feb 22, 1993), that a California school district is considered a state agency for purposes of the Eleventh Amendment. Thus, LAUSD cannot be sued absent a waiver of its immunity. None is alleged here. The district court thus properly dismissed all claims against LAUSD which seek retrospective relief.

Sanders also seeks "equitable relief". Apparently he believes that discrimination by LAUSD is ongoing and wants the court to bring an end to that discrimination. The district court called this claim "merely...a pretext for an otherwise straight-forward claim of damages against LAUSD." (Citing Edelman v. Jordan, 415 U.S. 651, 668 (1974)). Finding no error in the district court's characterization of Sanders' claim for "equitable relief", we affirm the court's dismissal of all claims against LAUSD in No. 93-55397.

II.

The district court dismissed Sanders' 42 U.S.C. Sect. 1981 action against UTLA

on the grounds that Sanders failed to make out a prima facie claim of discrimination against the Union.

Bugg v. International Union of Allied Indus. Workers of America, 674 F.2d 595 (7th Cir.), appeal dismissed, cert. denied, 459 U.S. 805 (1982), set out a three-pronged test for establishing a prima facie claim of discrimination against a union:

> (1) that the company committed a violation of the collective bargaining agreement with respect to the plaintiff; (2) that the Union permitted that breach to go unrepaired, thus breaching its own duty of fair representation; and (3) that there was some indication that the Union's actions were motivated by racial animus.

Id. at 598 n.5 Under this test, Sanders' claim against UTLA must fail because he did not show that UTLA's refusal to process his grievance was due to racial animus. Rather, UTLA refused to process the grievance because the explicit language of the collective bargaining agreement prohibited resolution of claims based on racial discrimination.

Sanders' Title VII claim against UTLA fails for the same reason. A prima facie case for Title VII discrimination requires a showing that:

> (1) He has engaged in statutorily protected expression;
> (2) He has suffered an adverse employment action; and
> (3) There is a causal link between the protected expression and the adverse action.

E.E.O.C. v. Crown Zellerbach Corp., 720 F.2d 1008, 1012 (9th Cir, 1983). The district court found that Sanders' was able to make out the first two elements. Sanders failed on the third element, however, because "he has not shown that the reason why UTLA did not process his grievance to arbitration was due to UTLA's desire to retaliate against Sanders for filing the grievance against the LAUSD." We agree that Sanders failed on his proof as to the third element, not because he failed to show UTLA had a desire to retaliate against him, but rather because Sanders failed to show that similarly situated non-minority employees would have

received arbitration. In other words, Sanders' adverse employment action was not the result of discrimination; it was the result of adherence by UTLA to the terms of the collective bargaining agreement.

Finally, Sanders claim of intentionial infliction of emotional distress against UTLA must also fail. Once again, Sanders offered no proof of actual discrimination by UTLA. We therefore affirm the district court's dismissal of all claims against UTLA.

III.

In No. 93-55569 the district court ordered Sanders to show cause why the case should not be dismissed for failure to prosecute. Sanders responded that "the

prosecute. Sanders responded that "the court may choose [to] close the case and allow the Department of Justice to do whatever it likes concerning the case." That is what the court did. We find no abuse of discretion and therefore affirm the dismissal for failure to prosecute.

For the foregoing reasons, the decisions of the district court are **AFFIRMED.**

FILED
FEB - 7, 1995
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATED COURT OF APPEALS

FOR THE NINTH CIRCUIT

COLUMBUS SANDERS, Plaintiff-Appellant, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,	No. 93-55397 D.C. No. CV-90-02703-KN
COLUMBUS SANDERS, Plaintiff-Appellant, v. LOS ANGELES BOARD OF EDUCATION, et al., Defendants-Appellees.	No. 93-55569 D.C. No. CV-92-02352-KN O R D E R

Before: D.W. NELSON and NOONAN, Circuit Judges, KING*, District Judge

The members of the panel that decided this case voted unanimously to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. (Fed.R. App. P. 35.).

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* Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, sitting by designation.

The petition for rehearing is denied and the suggestion for rehearing en banc rejected.

UNITED STATES
GOVERNMENT EQUAL
EMPLOYMENT
OPPORTUNITY
COMMISSION

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Charge No.: 340901317

COLUMBUS SANDERS Charging Party
Post Office Box 4040
Sunland, CA 91041

United Teachers of Respondent
Los Angeles
2511 West 3rd Street
Los Angeles, CA 90057

DETERMINATION

Under the authority vested in me by the Commission, I issue the

following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended.

All requirements for coverage have been met. Charging Party alleged that he was discriminated against in violation of Title VII in that he was denied Union representation regarding a grievance filed in September of 1988, because of his race, Black.

Examination of the evidence indicates that Charging Party filed a grievance with Respondent's Union against the employer alleging race discrimination. The Collective

Bargaining Agreement does not contain procedures for grieving discrimination of any type covered by Title VII. Specifically, the CBA states that "claimed violations of Article VII (non-Discrimination) are to be handled under appropirate statutory and/or judicial procedures (where available) rather than under this grievance procedure."

It is undisputed that Respondent's Union failed to process Charging Party's grievance upon determining that the claims were of race dicrimination. The facts did not show that, but for his race, Charging party would have been treated differently.

Based on this analysis I have determined that the evidence obtained during the investigation does not establish a violation ot the statute.

This determination does not conclude the processing of this charge. If the charging party wishes to have this determination reviewed, he must submit a signed letter to the Determinations Review Program which clearly sets forth the reasons for requesting the review and which lists the Charge Number and Respondent's name. Charging Party must also attach a copy of this Determination to her letter.

DETERMINATION

These documents must be personally delivered or mailed (postmarked) on or before Oct 12, 1990 to the Determinations Review Program, Office of Program Operations, EEOC, 1801 L Street, N.W., Washington, D.C. 20507. It is recommended that some proof of mailing, such as a certified mail receipt, be secured.

If the Charging Party submits a request by the date shown above, the Commission will review the determination. Upon completion of the review, the Charging Party and Respondent will be issued a final determination which will contain the

results of the review and what further action, if any, the Commission may take. The final determination will also give notice, as appropriate, of the Charging Party's right to sue.

If the Charging Party does not request a review of this deterination by Jan 11, 1991, this determination will become final the following day, the processing of this charge will be complete, and the charge will be dismissed. (This letter will be the only notice of dismissal and the only notice of the Charging Party's right to sue by the Commission. **FOLLOWING DISMISSAL, THE CHARGING PARTY MAY ONLY PURSUE THIS MATTER FURTHER FILING SUIT**

AGAINST THE RESPONDENT(S) NAMED IN THE CHARGE IN FEDERAL DISTRICT COURT WITHIN 90 DAYS OF THE EFFECTIVE DATE OF DISMISSAL.

Therefore, in the event a request for review is not made, if a suit is not filed by Jan 11, 1991, the Charging Party's right to sue will be lost. The Commission's regulations governing no cause determinations are printed in Title 29, Code of Federal Regulations, Section 1601.19.

On Behalf of the

Commission:

9/28/90
Date

s\Dorothy J. Porter
Dorothy J. Porter,
Director
Los Angeles
District Office

Encl: Information Sheet on Filing
Suit in Federal District Court